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1981

# State of Utah, In the Interest of: M.H.A Person Under Eighteen Years of Age : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, In the	:	
Interest of:	:	
M. H.	:	
A Person Under Eighteen	:	Case No. 17628
Years of Age.	:	

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BRIEF OF APPELLANT

AN APPEAL FROM THE JUDGMENT RENDERED IN THE  
SECOND DISTRICT JUVENILE COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE  
JOHN FARR LARSON, JUDGE PRESIDING

---

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FILED

MAY 29 1981

IN THE SUPREME COURT OF THE STATE OF UTAH

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Interest of:	:	
	:	
M. H.	:	
	:	
A Person Under Eighteen	:	Case No. 17628
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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The above named juvenile was convicted of the offenses of Attempted Homicide, Burglary of a Dwelling and Theft.

DISPOSITION IN THE LOWER COURT

Trial was held before the Honorable John Farr Larson on February 23, 1981. Appellant was committed to the custody of the Superintendent of the State Youth Development Center on March 2, 1981.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction and a new trial. Counsel on appeal requests permission to withdraw from the appeal and submits this Brief in compliance with Anders v. California, 386 U.S. 738, 87 S.Ct.

1396, 18 L.Ed.2d 93 (1967).

#### STATEMENT OF THE FACTS

Mr. Eddie Alvin Anderson testified that his residence at 572 South 800 West, Salt Lake City, Utah was broken into on December 24, 1980. Two hand guns and various items of jewelry were missing. Upon his return home Mr. Anderson noticed that the northeast basement window had been broken. Mr. Anderson further testified that he was familiar with M. H., the appellant, and that he lived two blocks from him.

Missy Oliver then testified for the State. She testified that she saw M. H. on December 24, 1980, in Mr. Anderson's yard which is next to her home. She testified that she was familiar with the appellant in this case, having known him for two years. At approximately noon, Missy testified, she saw the appellant near the window of Mr. Anderson's house and that there was someone else with him. She then testified that she heard what sounded like a window breaking in the Anderson house and went over to the part of the house where M. H. had been previously standing. She noticed that the basement window was broken and she saw M. H. climbing out of the window. She then testified that she asked M. H. what

he was doing and that he responded that "he was looking for some money." She then testified that M. H. ran out of the yard. She returned to her house just as her brother, Gary Oliver, was arriving. She testified that Gary started running after M. H.

Gary then testified on behalf of the State of Utah. He testified that some time in the early afternoon at approximately 12:30 or 1:00 he saw M. H. running across the Anderson backyard and climbing the fence (T. 39). Gary testified that he began chasing M. H. and caught up with him when he reached the end of the alley (T. 42). He then testified that M. H. pulled out a revolver, pointed it at Gary's chest, and pulled the trigger, but that the gun failed to fire (T. 44).

Officer William Shelton then testified for the State of Utah. Officer Shelton testified that upon questioning, M. H. denied any knowledge of the crime. The State then rested (T. 57).

Mabel H., the appellant's sister, testified on behalf of appellant that she was living with appellant and her grandmother on December 24, 1980. She testified that she was home all day that day and that M. H. was also home that day, except for a period of about fifteen

minutes around noon; and that at noon he went to his friend's house, G. P., and picked up some tapes that belonged to her that were at G. P.'s house. She further testified that G. P. lived about a block from their house.

Rose Bartlett, appellant's grandmother, then testified that she was at home with M. H. all day on the 24th day of December, 1980. She testified that at approximately noon M. H. left the house for about fifteen minutes.

G. P. then testified for the defense that he was a friend of M.H.'s and that on December 24, 1980, M. H. came to his house to pick up his sister's tapes and stayed for approximately fifteen to twenty minutes.

M. H. then testified in his own behalf and stated that on December 24, 1980, he had been home all day with his grandmother and sister, with the exception of about fifteen to twenty minutes when he went to G. P.'s house to pick up his sister's tapes. He denied having been near Eddie Anderson's house on the 24th day of December.

On rebuttal, the State then called Missy Oliver, who testified that some time after December 24, 1980, she saw M. H. on the bus and asked him who had been with him with he burglarized the Anderson home. Her testimony was that M. H. responded that G. P. had been with him



on that day (T. 88).

#### ARGUMENT

APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE  
THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE.

This Court has on several occasions stated the rules concerning the granting of a new trial on the basis that the verdict was not supported by the evidence. In State v. Cooper, 114 Ut. 531, 201 P.2d 764, 770 (1949), this Court stated:

The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court. This court cannot substitute its discretion for that of the trial court. We do not ordinarily interfere with the rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise, discretion on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

The above language would seem to indicate under what circumstances this Court will grant a new trial even in the absence of a motion for a new trial. The Court has also stated:

The state's evidence is so inherently improbable as to be unworthy of belief so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the state's evidence was such

that reasonable minds could believe beyond a reasonable doubt the defendant was guilty, the verdict must be sustained.

State v. Mills, 122 Ut. 306, 249 P.2d 211 (1952).

It is apparent from these various statements of the law that this Court does have the power to order a new trial in appropriate cases. This Court has said that:

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, and reason, conclude the defendant's guilt was proved beyond a reasonable doubt.

State v. Williams, 111 Ut. 379, 180 P.2d 551, 555 (1947).

Clearly, each case must turn upon its own facts and circumstances to whether or not a new trial is warranted because the verdict was not supported by the evidence. Appellant contends that in the case before the Court, the verdict was not supported by the evidence and therefore, he should be granted a new trial.

#### CONCLUSION

Counsel for appellant respectfully requests permission to withdraw, believing the appeal is without meritorious grounds. The foregoing Brief discusses the


law applicable to the only point that could arguably  
be presented on appeal.

Respectfully submitted this 29 day of May, 1981.

  
SUZAN PYLTON  
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct  
copy of the foregoing Brief of Appellant on the Attorney  
General's Office, 236 State Capitol Building, Salt Lake  
City, Utah 84114, this 29 day of May, 1981.

  
Tami Stewart

## THE ATTORNEY GENERAL

JUN 10 1981

Chief Justice Court Utah

## STATE OF UTAH

STATE CAPITOL • SALT LAKE CITY 84114  
(801) 533-5261DAVID L. WILKINSON  
ATTORNEY GENERALPAUL M. TINKER  
DEPUTY ATTORNEY GENERAL

June 10, 1981

Honorable Richard J. Maughan  
Chief Justice  
Utah Supreme Court  
State Capitol  
Salt Lake City, Utah 84114

Re: State of Utah, In the Interest  
of: M. H. A Person Under  
Eighteen Years of Age. Utah  
Supreme Court No. 17628.

Dear Chief Justice Maughan:

The appellant's attorney in the above entitled case, in harmony with Anders v. California, 386 U.S. 738, 87 S.Ct. 1296, 18 L.Ed.2d 493 (1967), stated that it is his opinion that the issues raised on appeal are not sound and has requested that he be allowed to withdraw.

This office feels that it would be futile to respond to a brief of this nature when likely the only assistance we could lend the Court would be to repeat the statements of the appellant's attorney and perhaps give some light as to the broad area of law surrounding the issue raised in the case.

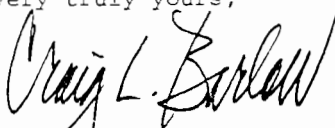
We feel that this would lend no beneficial impact to the Court, but we are willing to respond to any particular issues or do additional research at the Court's direction if requested.

We would appreciate it if you would accept this letter as a formal response in lieu of filing a brief and either proceed to dismiss the appeal on its merits or in

Honorable Richard J. Maughan  
June 10, 1981  
Page 2

harmony with Anders v. California. If the Court is desirous of having additional input from our office in any particular, we would be happy to comply upon direction.

Very truly yours,

A handwritten signature in black ink, reading "Craig L. Barlow". The signature is written in a cursive, flowing style with a large initial "C".

CRAIG L. BARLOW  
Assistant Attorney General

CLB/la

cc: Ms. Suzan Pixton  
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